

AMENDMENT UNDER 37 C.F.R. § 1.111
U.S. APPLICATION NO. 10/033,166
ATTORNEY DOCKET NO. Q67365

REMARKS

Claims 1-94 have been examined on their merits.

Applicants herein editorially amend claims 10, 19, 30, 38, 51, 59, 72 and 80. The amendments to claims 10, 19, 30, 38, 51, 59, 72 and 80 were not made for reasons of patentability, and thus do not implicate an estoppel in the application of the doctrine of equivalents.

Claims 1-94 are all the claims presently pending in the application.

1. Claims 1, 2, 4-6, 10, 13-19 and 22-24 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Ofek *et al.* (U.S. Patent No. 6,487,561) in view of Wood (U.S. Patent No. 5,515,502). Applicants respectfully traverse the § 103(a) rejection of claims 1, 2, 4-6, 10, 13-19 and 22-24 for at least the reasons discussed below.

The Patent Office acknowledges that Ofek *et al.* fail to teach or suggest at least the equalization of the archival load between backup devices. The Patent Office alleges that Wood provides the necessary disclosure to overcome the acknowledged deficiencies of Ofek *et al.*

The combination of Ofek *et al.* and Wood fails to teach or suggest at least the segmentation of files that exceed a threshold value into segments to equalize the archival load between backup devices, as recited in claim 1.

The Patent Office argues that Ofek *et al.* disclose the two backup devices recited in claim 1, and refers to elements 111 and 112 of Ofek *et al.* A careful reading of the disclosure of Ofek *et al.*, however, reveals that element 111 is a primary storage device and is not a backup device,

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and backup is performed from the primary storage device 111 to the secondary storage 112. *See, e.g.*, col. 3, lines 3-51 of Ofek *et al.* In addition, at column 20, lines 19-25, Ofek *et al.* disclose that “[a]t a step 122, … if the copying is from a backup tape to a primary storage element....”, again indicating that the only backup device is the secondary storage element 112 and not the primary storage element 111. In contrast, claim 1 of the present invention recites at least two backup devices, wherein is clearly not disclose by Ofek *et al.* and thus explains the lack of disclosure with respect to the equalization of archival load between backup devices.

The Patent Office further contends that element 114 is equivalent to the file source recited in claim 1. However, element 114 is a storage management application that is resident on a host 110. At column 17, lines 37-39, Ofek *et al.* disclose that the “computer system may include a storage management application (‘SMAPP’) for managing manipulation of storage within the storage domain.”

Assuming *arguendo* that the file source is the primary disk 111, the Patent Office continues to assert that Ofek *et al.* discloses segmentation of a file when reaching a threshold. Ofek *et al.* disclose “an accumulation file 324, 325 accumulates physical back up segments until a threshold size (for example 10 meg) is reached.” In contrast to the invention recited in claim 1, it is not a threshold in Ofek *et al.* that causes a file to be split into a segment, but rather a threshold after which no additional segments may be added into an accumulating file. At no time is a capability of splitting a file when reaching a threshold value taught or suggested in Ofek *et al.* Instead, when a segment causes the crossing of a threshold, this particular segment is stored elsewhere, but it is not split into two smaller segments.

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As noted above, the Patent Office has acknowledged that Ofek *et al.* fail to teach or suggest archival load balancing. The Patent Office cites Wood, specifically column 14, lines 37-44, as having the necessary disclosure to overcome the acknowledged deficiencies of Ofek *et al.* As defined in Wood at column 6, lines 28-32, “A STRIPE is an archive device denoted by its position within an ordered set of archive devices in concurrent use. Usage of STRIPES involves writing or reading a collection of PAGES to or from a set of archive devices so that the devices operate concurrently and performance is increased.” Although a stripe is part of a physical entity, *i.e.*, an archive device, the combination of Ofek *et al.* and Wood fails to teach or suggest archival load balancing that is performed by the segmentation of files that exceed a threshold value into segments to equalize the archival load between backup devices. The disclosure of Wood that the concurrency strategy should attempt to place approximately equal amounts of data on each stripe to provide load balancing of archive space usage does not teach or suggest the segmentation of files for equalization of archival loads among backup devices. At best, the combination of Ofek *et al.* and Wood disclose the use of stripes for archival purposes, and that the amount of data on the stripes should be approximately equal. However, neither reference teaches or suggests at least the segmentation of files above a threshold values for purposes of archival load equalization. Thus, Applicants submit that the Patent Office has not met the “all limitations” prong of a *prima facie* case of obviousness.

Applicants submit that one of ordinary skill in the art would not be motivated to combine Ofek *et al.* and Wood, since, as discussed above, neither reference teaches or suggests at least the segmentation of files above a threshold values for purposes of archival load equalization, as

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recited in claim 1. Thus, Applicants submit that the Patent Office has not met the motivation prong of a *prima facie* case of obviousness.

Based on at least the foregoing reasons, Applicants submit that claim 1 is in condition for allowance over the combination of Ofek *et al.* and Wood, and further submit that claims 2, 4-6, 10, 13-19 and 22-24 are allowable as well, at least by virtue of their dependency from claim 1. Applicants respectfully request that the Patent Office reconsider and withdraw the § 103(a) rejection of claims 1, 2, 4-6, 10, 13-19 and 22-24.

2. Claim 3 stands rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Ofek *et al.* in view of Wood and in further view of Dysert (U.S. Patent No. 6,804,690). Applicants respectfully traverse the § 103(a) rejection of claim 3 for at least the reasons discussed below.

The combination of Ofek *et al.*, Wood and Dysert fails to teach or suggest at least the segmentation of files that exceed a threshold value into segments to equalize the archival load between backup devices, as recited in claim 1 and included in claim 3. As argued previously, Applicants submit that the Patent Office is confusing backup devices with mirror storage devices. Dysert discloses, *inter alia*, that “a backup is performed by stopping the mirroring process (referred to as splitting the mirrors), taking one of the storage devices (mirrors) off line and backing up the data from that mirrors...” *See* col. 1, lines 42-45 of Dysert. Hence, Dysert clearly defines the difference between the storage device (the mirror in this case) and the respective backup process that is established thereof. While the mirror storage devices are

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geographically distributed, as also noted by Dysert, there is no disclosure whatsoever in Dysert that the backup system can be geographically separated from its respective mirror. Thus, Applicants submit that the Patent Office cannot fulfill the “all limitations” prong of a *prima facie* case of obviousness.

Applicants submit that one of ordinary skill in the art would not be motivated to combine Ofek *et al.*, Wood and Dysert, since, as discussed above, both Ofek *et al.*, Wood and Dysert lack any teaching about the desirability of segmenting files that exceed a threshold value into segments to equalize the archival load between backup devices, or the geographical distribution of the backup devices. Applicants submit that the Patent Office cannot fulfill the motivation prong of a *prima facie* case of obviousness.

Based on at least the foregoing reasons, Applicants submit that claim 3 is in condition for allowance over the combination of Ofek *et al.*, Wood and Dysert, and respectfully request that the Patent Office reconsider and withdraw the § 103(a) rejection of claim 3.

3. Claim 7 stands rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Ofek *et al.* in view of Wood and in further view of Cabrera *et al.* (U.S. Patent No. 5,854,754). Applicants respectfully traverse the § 103(a) rejection of claim 7 for at least the reasons discussed below.

Claim 7 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Ofek *et al.* and Wood in view of Cabrera *et al.* Since claim 7 depends upon claim 1 and since Cabrera *et al.* do not cure the deficient teachings of the combination of Ofek *et al.* and Wood with respect to

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claim 1, Applicants submit that claim 7 is allowable at least by virtue of its dependency from claim 1. Therefore, Applicants respectfully request that the Patent Office reconsider and withdraw the § 103(a) rejection of claim 7.

4. Claims 8, 9, 11, 12, 20, 21, 25-91, 93 and 94 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Ofek *et al.* in view of Wood and in further view of Pongracz (U.S. Patent No. 6,003,044). Applicants respectfully traverse the § 103(a) rejection of claims 8, 9, 11, 12, 20, 21, 25-91, 93 and 94 for at least the reasons discussed below.

With respect to claims 8 and 9, the combination of Ofek *et al.*, Wood and Pongracz fails to teach or suggest at least the segmentation of files that exceed a threshold value into segments to equalize the archival load between backup devices, as recited in claim 1 and included in claims 8 and 9. Ofek *et al.* disclose, *inter alia*, that an accumulation file (324, 325) accumulates physical back up segments until a threshold size (e.g., 10 megabytes) is reached. *See* col. 39, lines 60-64. In contrast, the present invention recited in claim 1 and included in claims 8 and 9 recites that the threshold value defines a segmentation value, for which files that are greater in size than the segmentation value will be segmented. The threshold in Ofek *et al.* is that of an accumulator that accumulates a plurality of file segments. Wood discloses, *inter alia*, the use of stripes as archival devices and equally distributing data to the stripes to speed retrieval thereof. Nothing in Wood, however, discloses the segmentation of files to equalize archival loading of backup devices. Pongracz discloses, *inter alia*, that a file allocation model (222) computes the capacity of the subset by summing the number of bytes in the file indicated in backup set storage

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(210), dividing the result by the total capacity in bytes per second for all backup drives (280) and multiplying the total capacity in bytes per second for all backup drives (280B, 280C). *See* col. 6, lines 51-57 of Pongracz. However, nothing in Pongracz indicates that the value calculated is used for the purpose of a segmentation threshold value as claimed in claim 1, and included via dependency in claims 8 and 9. Thus, Applicants submit that the Patent Office cannot fulfill the “all limitations” prong of a *prima facie* case of obviousness.

Applicants submit that one of ordinary skill in the art would not be motivated to combine the references, since, as discussed above, Ofek *et al.*, Wood and Pongracz all lack any teaching about the desirability of segmenting files that exceed a threshold value into segments to equalize the archival load between backup devices, or how the threshold value for segmentation is calculated. Thus, Applicants submit that the Patent Office cannot fulfill the motivation prong of a *prima facie* case of obviousness.

Based on at least the foregoing reasons, Applicants submit that claims 8 and 9 are in condition for allowance over the combination of Ofek *et al.*, Wood and Pongracz, and respectfully request that the Patent Office reconsider and withdraw the § 103(a) rejection of claims 8 and 9.

With respect to claims 11, 12, 20 and 21, the combination of Ofek *et al.*, Wood and Pongracz fails to teach or suggest at least the segmentation of files that exceed a threshold value into segments to equalize the archival load between backup devices, as recited in claim 1 and included in claims 11, 12, 20 and 21. While Pongracz admittedly discloses sorting files in a descending order, there is no teaching or suggestion in either Ofek *et al.*, Wood or Pongracz of a

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value that is used as a file segmentation threshold value as claimed in claim 1, and included via dependency in claims 11, 12, 20 and 21. Thus, Applicants submit that the Patent Office cannot fulfill the “all limitations” prong of a *prima facie* case of obviousness.

Applicants submit that one of skill in the art would not be motivated to combine two references, since, as discussed above, Ofek *et al.*, Wood and Pongracz all lack any teaching about the desirability of segmenting files that exceed a threshold value into segments to equalize the archival load between backup devices, or how the threshold value for segmentation is calculated. Thus, Applicants submit that the Patent Office cannot fulfill the motivation prong of a *prima facie* case of obviousness.

Based on at least the foregoing reasons, Applicants submit that claims 11, 12, 20 and 21 are in condition for allowance over the combination of Ofek *et al.*, Wood and Pongracz, and respectfully request that the Patent Office reconsider and withdraw the § 103(a) rejection of claims 11, 12, 20 and 21.

With respect to independent claims 25, 48 and 69, the combination of Ofek *et al.*, Wood and Pongracz fails to teach or suggest at least the calculation of a file size segmentation threshold value. Ofek *et al.* disclose, *inter alia*, that an accumulation file (324, 325) accumulates physical back up segments until a threshold size (e.g., 10 megabytes) is reached. See col. 39, lines 60-64. In contrast, the present invention recited in claims 25, 48 and 69 calculates a file size segmentation threshold value. The threshold value of Ofek *et al.* is an accumulator that accumulates a plurality of file segments. Wood discloses, *inter alia*, the use of stripes as archival devices and equally distributing data to the stripes to speed retrieval thereof. Nothing in Wood,

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however, discloses the segmentation of files to equalize archival loading of backup devices. Pongracz discloses, *inter alia*, that a file allocation model (222) computes the capacity of the subset by summing the number of bytes in the file indicated in backup set storage (210), dividing the result by the total capacity in bytes per second for all backup drives (280) and multiplying the total capacity in bytes per second for all backup drives (280B, 280C). *See* col. 6, lines 51-57 of Pongracz. However, nothing in Pongracz indicates that the value calculated is a file size segmentation threshold value as claimed in claims 25, 48 and 69. Thus, Applicants submit that the Patent Office cannot fulfill the “all limitations” prong of a *prima facie* case of obviousness.

Applicants submit that one of ordinary skill in the art would not be motivated to combine the references, since, as discussed above, Ofek *et al.*, Wood and Pongracz all lack any teaching about the desirability of calculating a file size segmentation threshold value. Thus, Applicants submit that the Patent Office cannot fulfill the motivation prong of a *prima facie* case of obviousness.

Based on at least the foregoing reasons, Applicants submit that claims 25, 48 and 69 are in condition for allowance over the combination of Ofek *et al.*, Wood and Pongracz. Applicants further submit that claims 29 and 50 are allowable as well, at least by virtue of their dependency from claims 25 and 48, respectively. Thus, Applicants respectfully request that the Patent Office reconsider and withdraw the § 103(a) rejection of claims 25, 29, 48, 50 and 69.

Claims 26-28, 49 and 70 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Ofek *et al.* in view of Wood and in further view of Pongracz. Since claims 26-28, 49 and 70 depend upon independent claims 25, 48 and 69, and since Pongracz does not cure

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the deficient teachings of the combination of Ofek *et al.* and Wood with respect to independent claims 25, 48 and 69, Applicants submit that claims 26-28, 49 and 70 are allowable at least by virtue of their dependency from claim 25, 48 and 69. Therefore, Applicants respectfully request that the § 103(a) rejection of claims 26-28, 49 and 70 be reconsidered and withdrawn.

Claims 30, 38, 44, 51, 59, 65, 72, 80 and 86 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Ofek *et al.* in view of Wood and in further view of Pongracz. While the Patent Office asserts that Ofek *et al.* discloses the segmentation of files, Ofek *et al.* is limited to segmenting files due to a physical data block size. Furthermore, Applicants do not discern any teaching or suggestion at col. 38, lines 53-61 of Ofek *et al.* that file segments are sorted into a sorted list of file segments, only that the logical block elements can be stored in any order on the physical devices. Wood discloses, *inter alia*, the use of stripes as archival devices and equally distributing data to the stripes to speed retrieval thereof. Nothing in Wood, however, discloses the segmentation of files to equalize archival loading of backup devices. Since claims 30, 38, 44, 51, 59, 65, 72, 80 and 86 depend upon independent claims 25, 48 and 69, and since Pongracz does not cure the deficient teachings of the combination of Ofek *et al.* and Wood with respect to independent claims 25, 48 and 69, Applicants submit that claims 30, 38, 44, 51, 59, 65, 72, 80 and 86 are allowable at least by virtue of their dependency from claims 25, 48 and 69, respectively. Therefore, Applicants respectfully request that Patent Office reconsider and withdraw the § 103(a) rejection of claims 30, 38, 44, 51, 59, 65, 72, 80 and 86.

With respect to claims 31, 45, 52, 66, 73 and 87, Applicants do not agree that Ofek *et al.* at col. 20, lines 30-35 teach or suggest that the control program attaches a header to each of the

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file segments. Since claims 31, 45, 52, 66, 73 and 87 depend upon independent claims 25, 48 and 69, and since Pongracz does not cure the deficient teachings of the combination of Ofek *et al.* and Wood with respect to independent claims 25, 48 and 69, Applicants submit that claims 31, 45, 52, 66, 73 and 87 are allowable at least by virtue of their dependency from claims 25, 48 and 69, respectively. Therefore, Applicants respectfully request that the Patent Office reconsider and withdraw the § 103(a) rejection of claims 31, 45, 52, 66, 73 and 87.

With respect to claims 32, 46, 53, 67, 74 and 88, Applicants do not agree that Ofek *et al.* at col. 6, lines 5-30 teach or suggest that the segment header comprises at least one of an offset field or a size field. Since claims 32, 46, 53, 67, 74 and 88 depend upon independent claims 25, 48 and 69, and since Pongracz does not cure the deficient teachings of the combination of Ofek *et al.* and Wood with respect to independent claims 25, 48 and 69, Applicants submit that claims 32, 46, 53, 67, 74 and 88 are allowable at least by virtue of their dependency from claims 25, 48 and 69, respectively. Therefore, Applicants respectfully request that the Patent Office reconsider and withdraw § 103(a) rejection of claims 32, 46, 53, 67, 74 and 88.

Claims 33, 34, 39, 40, 54, 55, 60, 61, 75, 76, 81 and 82 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Ofek *et al.* in view of Wood and in further view of Pongracz. While the Patent Office asserts that Ofek *et al.* discloses the segmentation of files, Ofek *et al.* is limited to segmenting files due to a physical data block size. Furthermore, Applicants do not discern any teaching or suggestion at col. 38, lines 53-61 of Ofek *et al.* that file segments are sorted into a sorted list of file segments, only that the logical block elements can be stored in any order on the physical devices. Since claims 33, 34, 39, 40, 54, 55, 60, 61,

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75, 76, 81 and 82 depend upon independent claims 25, 48 and 69, and since Pongracz does not cure the deficient teachings of the combination of Ofek *et al.* and Wood with respect to independent claims 25, 48 and 69, Applicants submit that claims 33, 34, 39, 40, 54, 55, 60, 61, 75, 76, 81 and 82 are allowable at least by virtue of their dependency from claims 25, 48 and 69, respectively. Therefore, Applicants respectfully request that the Patent Office reconsider and withdraw the § 103(a) rejection of claims 33, 34, 39, 40, 54, 55, 60, 61, 75, 76, 81 and 82.

With respect to claims 35, 41, 42, 56, 62, 63, 77, 83 and 84, the Patent Office alleges that Ofek *et al.* at col. 20, lines 19-29 discloses concurrently writing files and file segments to the backup devices. The concurrency of Ofek *et al.*, however, is directed to the use of a logical object while backing up to a physical data block. According to Ofek *et al.*, freezing is necessary to prevent erroneous data of being copied. In contrast, the present application claims the concurrent writing of different files or file segments into different storage devices. Since claims 35, 41, 42, 56, 62, 63, 77, 83 and 84 depend upon independent claims 25, 48 and 69, and since Pongracz does not cure the deficient teachings of the combination of Ofek *et al.* and Wood with respect to independent claims 25, 48 and 69, Applicants submit that claims 35, 41, 42, 56, 62, 63, 77, 83 and 84 are allowable at least by virtue of their dependency from claims 25, 48 and 69, respectively. Therefore, Applicants respectfully request that the Patent Office reconsider and withdraw § 103(a) rejection of claims 35, 41, 42, 56, 62, 63, 77, 83 and 84.

Claims 36, 43, 57, 64, 78 and 85 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Ofek *et al.* in view of Wood and in further view of Pongracz. While the Patent Office asserts that Ofek *et al.* discloses the segmentation of files, Ofek *et al.* is limited to

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segmenting files due to a physical data block size. Furthermore, Applicants do not discern any teaching or suggestion at col. 38, lines 53-61 of Ofek *et al.* that file segments are sorted into a sorted list of file segments, only that the logical block elements can be stored in any order on the physical devices. Since claims 36, 43, 57, 64, 78 and 85 depend upon independent claims 25, 48 and 69, and since Pongracz does not cure the deficient teachings of the combination of Ofek *et al.* and Wood with respect to independent claims 25, 48 and 69, Applicants submit that claims 36, 43, 57, 64, 78 and 85 are allowable at least by virtue of their dependency from claims 25, 48 and 69, respectively. Therefore, Applicants respectfully request that the Patent Office reconsider and withdraw the § 103(a) rejection of claims 36, 43, 57, 64, 78 and 85.

With respect to claims 37, 47, 58, 68, 79 and 89, the Patent Office alleges that Ofek *et al.* disclose in col. 6, lines 32-50 that file segments are written to the least filled-up backup device. The text cited by the Patent Office simply describes the conversion of data into backup data and its subsequent storage in a backup storage device. There is no discussion of writing file segments to the least filled-up backup device. Therefore, Applicants respectfully request that the § 103(a) rejection of claims 37, 47, 58, 68, 79 and 89 be reconsidered and withdrawn.

With respect to claim 90, the combination of Ofek *et al.* and Pongracz fails to teach or suggest at least the calculation of a file size segmentation threshold value. Ofek *et al.* disclose, *inter alia*, that an accumulation file (324, 325) accumulates physical back up segments until a threshold size (e.g., 10 megabytes) is reached. *See* col. 39, lines 60-64. In contrast, the present invention recited in claims 25, 48 and 69 calculates a file size segmentation threshold value. The threshold value of Ofek *et al.* is an accumulator that accumulates a plurality of file segments.

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Wood discloses, *inter alia*, the use of stripes as archival devices and equally distributing data to the stripes to speed retrieval thereof. Nothing in Wood, however, discloses the segmentation of files to equalize archival loading of backup devices. Pongracz discloses, *inter alia*, that a file allocation model (222) computes the capacity of the subset by summing the number of bytes in the file indicated in backup set storage (210), dividing the result by the total capacity in bytes per second for all backup drives (280) and multiplying the total capacity in bytes per second for all backup drives (280B, 280C). *See* col. 6, lines 51-57 of Pongracz. However, nothing in Pongracz indicates that the value calculated is a file size segmentation threshold value as claimed in claims 25, 48 and 69. Thus, Applicants submit that the Patent Office cannot fulfill the “all limitations” prong of a *prima facie* case of obviousness.

Applicants submit that one of ordinary skill in the art would not be motivated to combine the references, since, as discussed above, Ofek *et al.*, Wood and Pongracz lack any teaching about the desirability of calculating a file size segmentation threshold value. Thus, Applicants submit that the Patent Office cannot fulfill the motivation prong of a *prima facie* case of obviousness.

Based on at least the foregoing reasons, Applicants submit that claims 90, 91, 93 and 94 are in condition for allowance over the combination of Ofek *et al.*, Wood and Pongracz, and respectfully request that the Patent Office reconsider and withdraw the § 103(a) rejection of claims 90, 91, 93 and 94.

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5. Claim 92 stands rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Ofek *et al.* in view of Wood and in further view of Dysert and in further view of Pongracz. Applicants respectfully traverse the § 103(a) rejection of claim 92 for at least the reasons discussed below.

The combination of Ofek *et al.*, Wood, Pongracz and Dysert fails to teach or suggest at least the calculation of a file size segmentation threshold value. Ofek *et al.* disclose, *inter alia*, that an accumulation file (324, 325) accumulates physical back up segments until a threshold size (e.g., 10 megabytes) is reached. *See* col. 39, lines 60-64. In contrast, the present invention recited in claims 25, 48 and 69 calculates a file size segmentation threshold value. The threshold value of Ofek *et al.* is an accumulator that accumulates a plurality of file segments. Wood discloses, *inter alia*, the use of stripes as archival devices and equally distributing data to the stripes to speed retrieval thereof. Nothing in Wood, however, discloses the segmentation of files to equalize archival loading of backup devices. Pongracz discloses, *inter alia*, that a file allocation model (222) computes the capacity of the subset by summing the number of bytes in the file indicated in backup set storage (210), dividing the result by the total capacity in bytes per second for all backup drives (280) and multiplying the total capacity in bytes per second for all backup drives (280B, 280C). *See* col. 6, lines 51-57 of Pongracz. However, nothing in Pongracz indicates that the value calculated is a file size segmentation threshold value as claimed in claims 25, 48 and 69. Dysert discloses that “a backup is performed by stopping the mirroring process (referred to as splitting the mirrors), taking one of the storage devices (mirrors) off line and backing up the data from that mirrors...” *See* col. 1, lines 42-45 of Dysert. Hence, Dysert

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clearly defines the difference between the storage device (the mirror in this case) and the respective backup process that is established thereof. While the mirror storage devices are geographically distributed, as also noted by Dysert, there is no disclosure whatsoever in Dysert that the backup system can be geographically separated from its respective mirror. However, nothing in the combination of Ofek *et al.*, Wood, Pongracz and Dysert teaches or suggests the determination of a file size segmentation threshold value as recited in claim 90, and included via dependency in claim 92. Thus, Applicants submit that the Patent Office cannot fulfill the “all limitations” prong of a *prima facie* case of obviousness.

Applicants submit that one of ordinary skill in the art would not be motivated to combine the references, since, as discussed above, Ofek *et al.*, Wood, Pongracz and Dysert lack any teaching about the desirability of calculating a file size segmentation threshold value. Thus, Applicants submit that the Patent Office cannot fulfill the motivation prong of a *prima facie* case of obviousness.

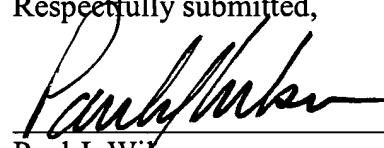
Based on at least the foregoing reasons, Applicants submit that claim 92 is in condition for allowance over the combination of Ofek *et al.*, Wood, Pongracz and Dysert, and respectfully request that the Patent Office reconsider and withdraw the § 103(a) rejection of claim 92.

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In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



Paul J. Wilson

Registration No. 45,879

SUGHRUE MION, PLLC
Telephone: (202) 293-7060
Facsimile: (202) 293-7860

WASHINGTON OFFICE
23373
CUSTOMER NUMBER

Date: September 1, 2005